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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/404,518	09/23/1999	STUART SERKIN	09857/030001	8450
26161	7590	08/25/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			ART UNIT	PAPER NUMBER

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal	Application No. 09/404,518	Applicant(s) MARTYN ET AL.
	Examiner Jeffrey Pwu	Art Unit 3628 <i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 07 May 2004 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

(g) ☒ **NON-COMPLIANCE OF 37 CFR 1.192(c) REQUIREMENT**

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

Jeffrey Pwu
Examiner
Art Unit: 3628

Art Unit: 3628


NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

1.192(c)

1. The brief includes a statement that claims do not stand or fall together, but fails to present reasons in support thereof as required under 37 CFR 1.192(c)(7). MPEP § 1206. Appellant in the Appeal Brief filed 5/7/2004 stated that “[t]he claims do not stand or fall together” (emphasis added). However, Appellant did not provide any single argument regarding the patentability of each and everyone of the claims individually and separately.

2. In addition, Appellant’s position regarding “Grouping of claims” (page 4 of Appeal Brief) is at best inconsistent. For example, claim 7 currently belongs to both Group I and Group II.

3. Applicant is required to make the necessary corrections within a shortened statutory period set to expire ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this letter. Extensions of time may be granted under 37 CFR 1.136.


JEFFREY PWU
PRIMARY EXAMINER